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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,221	01/05/2001	Elbert L. McKague JR.	TA-00491	5331

7590

11/20/2002

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 11/20/2002

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/955221

Applicant(s)

McKague Jr et al.

Examiner

John Guarriello

Group Art Unit

1771

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-25 is/are pending in the application.
- Of the above claim(s) 10-25 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-9 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). #4
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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**DETAILED ACTION**

***Election/Restriction***

15. Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 1-9, drawn to structural assembly with woven laminate, classified in class 442, subclass 275.
- II. Claims 10-14, drawn to structural assembly, classified in class 428, subclass 34.1+.
- III. Claims 16-25, drawn to method of making structural assembly, classified in class 264, subclass 257.

16. The inventions are distinct, each from the other because:

17. Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate

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product is deemed to be useful as insulation barrier and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

18. Inventions I,II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different

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process whereby the impregnation of the resin in the article can be accomplished in one step instead of several steps.

19. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

20. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

21. During a telephone conversation with James Bradley on 9/16/2002 a provisional election was made with traverse to prosecute the invention of Group I., claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-14, Group II and claims 15-25, Group III are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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22. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

23. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

24. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 1, the preamble of the claim is directed to “structural assembly” or “component”, it is the Examiner’s position that the preamble

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will be interpreted as a component which comprises a composite of elements forming the component composite.

***Claim Rejections - 35 USC § 102***

25. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 1,262,381.

FR'381 describes a structural component formed from layers of reinforcing material which are resin impregnated fiberglass which can be used to form airplane wings, (from oral translation pending complete written translation; see also page 4, column 2, line 3 to page 5, column 2, last line). FR'381 describes mandrels used to distribute the resin uniformly to the fabric,



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(per oral translation pending complete written translation; see Figures 1-9).

FR'381 describes the essential limitations of the claimed invention. Claims lack novelty.

***Claim Rejections - 35 USC § 103***

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 1 262 381 in view of EP 773 099.

FR'381 as above in paragraph but is silent about the braided fibers and the sleeves over the mandrels.

EP'099 describes making components involving skin or panel structures which correspond to a composite component of the claimed invention, (page 1, column 1 lines 15-18). EP'099 describes placing resin impregnated sheets

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over a mold form with mandrels which are wrapped corresponding to sleeves over the mandrels as in the claimed invention, (page 2, lines 28-58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the sleeves with mandrels of EP'099 in the component structure of FR'381 motivated with the expectation that the improved component would exhibit high strength and minimal weight as noted by EP'099, page 1 column 1, lines 15-19.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

November 8, 2002



TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700